

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA **RECEIVED**
EASTERN DIVISION

2007 DEC 14 A 11:12

STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY,

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DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Plaintiff,

*

vs.

CASE NUMBER: 3:07cv1087-mef

TIMOTHY BRANDON PARRISH,

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*

Defendant.

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COMPLAINT FOR DECLARATORY JUDGMENT

1. Plaintiff State Farm Mutual Automobile Insurance Company is an insurance company which is a citizen of the State of Illinois, qualified to do business within the State of Alabama.
2. Defendant Timothy Brandon Parrish is a citizen of the State of Alabama, currently residing in Russell County, Alabama.
3. This Court has jurisdiction by virtue of diversity of citizenship, in that Plaintiff is a citizen of a foreign state and Defendant is a citizen of the State of Alabama, and damages in controversy in this case are in excess of \$75,000.00, exclusive of interest and costs.
4. Venue in this matter is proper in the Middle District of Alabama, Eastern Division, because Defendant is a resident citizen of Russell County, Alabama, and the events in question took place in Lee County, Alabama.

5. On November 23, 2006, Defendant Timothy Brandon Parrish was driving his motorcycle on Lee Road 997, when his motorcycle collided with an automobile driven by Byron Kyle Weeks. Timothy Brandon Parrish alleges that Byron Kyle Weeks negligently caused the accident, and Defendant Timothy Brandon Parrish claims that he is entitled to recover damages against Byron Kyle Weeks as a result of the automobile accident in question.
6. As a result of the motorcycle/automobile accident referenced above, Timothy Brandon Parrish recovered liability policy limits of \$25,000.00 from a policy of insurance issued to Byron Kyle Weeks.
7. After recovering liability proceeds from Byron Kyle Weeks, Defendant Timothy Brandon Parrish has now demanded underinsured motorist benefits from State Farm Mutual Automobile Insurance Company. Specifically, Defendant Timothy Brandon Parrish has demanded policy limits of \$90,000.00 in underinsured motorist benefits from State Farm Mutual Automobile Insurance Company.
8. Defendant Timothy Brandon Parrish did not have insurance coverage on the motorcycle operated by him at the time of the accident. Defendant Timothy Brandon Parrish is claiming underinsured motorist benefits from State Farm Mutual Automobile Insurance Company based upon policies of insurance

issued to his mother, Sammie Platko, who resides at 759 Lee Road 425, Phenix City, Alabama 36870. In order to recover underinsured motorist benefits from the policies of insurance issued to his mother, Sammie Platko, Defendant Timothy Brandon Parrish must qualify as an insured person under the insurance policies. Defendant Timothy Brandon Parrish would qualify as an insured person only if he primarily resided with his mother, Sammie Platko, at 759 Lee Road 425, Phenix City, Alabama 36870. If Timothy Brandon Parrish did not primarily reside at that residence, he is not entitled to recover underinsured benefits from State Farm Mutual Automobile Insurance Company.

9. The policy of insurance issued by State Farm Mutual Automobile Insurance Company requires that a person "primarily" reside at the home of the insured in order to qualify as a resident relative so as to be an insured person. The term "primarily" has been defined and has been upheld by courts in Alabama. State Farm Mutual Automobile Insurance Company v. Harris, 882 So.2d 849 (Ala. 2003); B.D.B. v. State Farm Mutual Automobile Insurance Company, 814 So.2d 877 (Ala. 2001).
10. In making the claim for underinsured motorist benefits, Defendant Timothy Brandon Parrish has claimed that he primarily resided at 759 Lee Road 425, Phenix City, Alabama 36870 at the time of the accident. In attempting to

resolve the claim at issue herein, State Farm Mutual Automobile Insurance Company has determined the following facts:

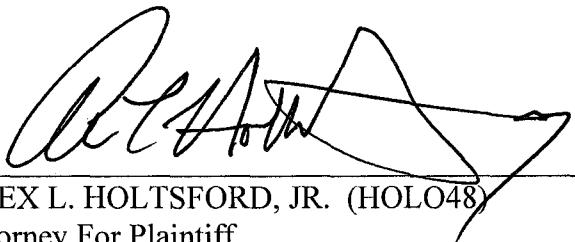
- a. Timothy Brandon Parrish told the investigating state trooper at the scene of the accident that he resided at 94 Westside Drive, Phenix City, Alabama 36870;
- b. Timothy Brandon Parrish states that his residence address is 94 Westside Drive, Phenix City, Alabama 36870 on his Alabama driver's license;
- c. Timothy Brandon Parrish admits that he receives all of his mail at 94 Westside Drive, Phenix City, Alabama 36870;
- d. In 2001, Timothy Brandon Parrish got sued and was served at his residence at 94 Westside Drive, Phenix City, Alabama 36870;
- e. In 2002, Timothy Brandon Parrish received a traffic ticket and represented to the police officer and the court that his residence address was 94 Westside Drive, Phenix City, Alabama 36870;
- f. On May 18, 2006, approximately six (6) months before the accident in question, Timothy Brandon Parrish received a traffic ticket and represented to the officer and the court that his residence address was 94 Westside Drive, Phenix City, Alabama 36870;

- g. On April 12, 2007, approximately six (6) months after the accident in question, Timothy Brandon Parrish received a traffic ticket and represented to the officer and the court that his address was 94 Westside Drive, Phenix City, Alabama 36870;
- h. When Timothy Brandon Parrish was taken to the hospital from the scene of the accident in question, he represented to Care Ambulance Company that his address was 94 Westside Drive, Phenix City, Alabama 36870;
- I. After the day of the accident, Timothy Brandon Parrish has received fairly extensive medical treatment from numerous providers in Alabama and in Georgia, and each of those bills for medical treatment reflect that Timothy Brandon Parrish resided at 94 Westside Drive, Phenix City, Alabama 36870;
- j. Upon information provided to State Farm Mutual Automobile Insurance Company, Timothy Brandon Parrish lists 94 Westside Drive, Phenix City, Alabama 36870 as his residence address on his employment documents;
- k. Upon information provided to State Farm Mutual Automobile Insurance Company, Timothy Brandon Parrish lists 94 Westside Drive, Phenix City, Alabama 36870 as his residence address on his

income tax returns;

1. The name of Timothy Brandon Parrish does not appear on any insurance policy records for any policies issued to Sammie Platko for resident drivers.
11. Because all of the written documentation ever presented to State Farm Mutual Automobile Insurance Company by Timothy Brandon Parrish or located by State Farm Mutual Automobile Insurance Company reflects that Timothy Brandon Parrish resided at 94 Westside Drive, Phenix City, Alabama 36870, but Timothy Brandon Parrish makes inconsistent oral statements while claiming insurance benefits that he resided at the insured location of 759 Lee Road 425, Phenix City, Alabama 36870, a justiciable controversy has arisen as to whether or not State Farm Mutual Automobile Insurance Company owes underinsured motorist benefits to Timothy Brandon Parrish as a result of the automobile accident of November 23, 2006. Because of the justiciable controversy, State Farm Mutual Automobile Insurance Company seeks a declaratory judgment to define the rights and obligations, if any, of State Farm Mutual Automobile Insurance Company to Timothy Brandon Parrish as a result of the automobile accident of November 23, 2006.

WHEREFORE, State Farm Mutual Automobile Insurance Company respectfully requests that this Court take jurisdiction of this case, and that after reviewing the evidence in this case, declare whether or not State Farm Mutual Automobile Insurance Company owes contractual benefits of underinsured motorist benefits to Timothy Brandon Parrish. State Farm Mutual Automobile Insurance Company also requests that it be entitled to any other relief proper under applicable law.



ALEX L. HOLTSFORD, JR. (HOLO48)
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PLEASE SERVE DEFENDANT AT:

**Timothy Brandon Parrish
c/o Dana P. Gentry, Attorney at Law
5009 Riverchase Drive, Suite A
Phenix City, Alabama 36864**

DUPLICATE

Court Name: U S DISTRICT COURT - AL/M
Division: 2
Receipt Number: 4602001595
Cashier ID: brobinso
Transaction Date: 12/14/2007
Payer Name: NIX HOLTSFORD GILLILAND

CIVIL FILING FEE

For: NIX HOLTSFORD GILLILAND
Case/Party: D-ALM-3-07-CV-001087-001
Amount: \$350.00

CHECK

Check/Money Order Num: 32197
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

STATE FARM MUTUAL ETC